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**BY ECF**

The Honorable Joseph F. Bianco  
U.S. District Court for the Eastern District of New York  
100 Federal Plaza  
Central Islip, New York 11722

**Re: United States of America v. Kenner, Cr. No. 13-607 (JFB)**

Dear Judge Bianco:

Kevin P. Mulry of Farrell Fritz, P.C. and I represent Diamante Cabo San Lucas, LLC, Diamante Cabo San Lucas S. de R.L. de C.V., KAJ Holdings, LLC, Diamante Properties, LLC, and Kenneth A. Jowdy (together, "DCSL") in connection with the forfeiture proceeding in this case. I respectfully submit this letter in response to the joint request by Danske Bank A/S, London Branch ("Danske") and DCSL that we be given an opportunity to evaluate the appraisal report commissioned by the government and prepared by Cushman & Wakefield for the Diamante Resort, The Village San Marcos, as of April 28, 2017 (the "Appraisal Report"), before the Appraisal Report is produced to defendant Kenner in response to his request. The Court granted the request by Danske and DCSL on July 11, 2018.

We have reviewed the Appraisal Report and discussed its contents with counsel for Danske. Although we are perplexed by what possible relevance, if any, the Appraisal Report may have to the defendants' position in either the forfeiture proceeding or the sentencing, DCSL does not object to the government's production of the Appraisal Report to defendant Kenner in connection with this case.

We request, however, that if the Appraisal Report is produced to the defendants, that it be produced subject to a confidentiality order that limits access to the Appraisal Report to the parties and their respective counsel in connection with this case only, and prohibits the parties and counsel from publishing the Appraisal Report, in whole or in part, in any media format, including, but not limited to, email, social media, blogs, print media, or online media. In addition, if a party decides to include any portion of the Appraisal Report in a court filing in this case, we request that the filing be submitted to the Court for a determination whether the portion of the filing that contains any excerpts from the Appraisal Report should be filed under seal.

It is disheartening to DCSL that defendant Kenner continues to use this case as a forum in which to unfairly malign DCSL and Mr. Jowdy, as evidenced by one of Kenner's recent pro se filings in this case. Kenner has been attempting to undermine the DCSL parties' efforts to develop this project for more than ten years. Even now, more than three years after his conviction, he continues to engage in conduct that is potentially detrimental to the project. We feel compelled to request this confidentiality protection, because we believe that Kenner should not be permitted to misuse the business and financial information of non-parties that may be made available to him in this case in his ongoing campaign to disparage DCSL and Mr. Jowdy under the false pretense of seeking to portray himself as a victim.

We have spoken with Assistant United States Attorney Diane C. Leonardo and the government consents to our request that the production of the Appraisal Report be subject to the confidentiality limitations outlined above.

Thank you for the Court's consideration.

Respectfully submitted,



Thomas McC. Souther

cc: All parties of record via ECF  
Doreen S. Martin, Esq. (By Email)  
Kevin P. Mulry, Esq. (By Email)